

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

|                            |          |                        |
|----------------------------|----------|------------------------|
| <b>ANDY’S MUSIC, INC.,</b> | <b>:</b> |                        |
| <b>Plaintiff,</b>          | <b>:</b> |                        |
| <b>vs.</b>                 | <b>:</b> | <b>CA 08-0463-KD-C</b> |
| <b>ANDY’S MUSIC, INC.,</b> | <b>:</b> |                        |
| <b>Defendant.</b>          | <b>:</b> |                        |

**CORRECTED REPORT AND RECOMMENDATION**

Defendant’s Motion to Dismiss for Lack of Personal Jurisdiction (Doc. 9), filed January 26, 2009, was referred to the undersigned for a report and recommendation pursuant to 28 U.S.C. §636(b)(1)(A). In response to that referral, a Report and Recommendation was entered on February 26, 2009 (Doc. 17) to which Plaintiff has filed an objection (Docs. 18-19). After reviewing Plaintiff’s objection, filed March 12, 2009, it is determined that the recommendation should be **corrected in part**.

That portion recommending dismissal of Plaintiff’s claims with prejudice was clearly in error since no decision on the merits of the claims was requested or intended. Accordingly, that portion of the Report and Recommendation (Doc. 17) that recommends a dismissal of Plaintiff’s claims to be WITH PREJUDICE is corrected to recommend instead that Plaintiff’s claims be **DISMISSED WITHOUT PREJUDICE** for lack of personal jurisdiction.

With this correction, the Report and Recommendation is submitted for consideration by the parties and Judge DuBose.

**DONE** this 13<sup>th</sup> day of March, 2009.

s/WILLIAM E. CASSADY  
UNITED STATES MAGISTRATE JUDGE

**MAGISTRATE JUDGE'S EXPLANATION OF PROCEDURAL RIGHTS  
AND RESPONSIBILITIES FOLLOWING RECOMMENDATION, AND  
FINDINGS CONCERNING NEED FOR TRANSCRIPT**

1. **Objection.** Any party who objects to this recommendation, or anything in it, must, within ten days of the date of service of this document, file specific written objections with the Clerk of this Court. Failure to do so will bar a *de novo* determination by the district judge of anything in the recommendation and will bar an attack, on appeal, of the factual findings of the Magistrate Judge. *See* 28 U.S.C. § 636(b)(1)(C); *Lewis v. Smith*, 855 F.2d 736, 738 (11th Cir. 1988); *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. Unit B, 1982)(*en banc*). The procedure for challenging the findings and recommendations of the Magistrate Judge is set out in more detail in SD ALA LR 72.4 (June 1, 1997), which provides that:

A party may object to a recommendation entered by a magistrate judge in a dispositive matter, that is, a matter excepted by 28 U.S.C. § 636(b)(1)(A), by filing a “Statement of Objection to Magistrate Judge’s Recommendation” within ten days after being served with a copy of the recommendation, unless a different time is established by order. The statement of objection shall specify those portions of the recommendation to which objection is made and the basis for the objection. The objecting party shall submit to the district judge, at the time of filing the objection, a brief setting forth the party’s arguments that the magistrate judge’s recommendation should be reviewed *de novo* and a different disposition made. It is insufficient to submit only a copy of the original brief submitted to the magistrate judge, although a copy of the original brief may be submitted or referred to and incorporated into the brief in support of the objection. Failure to submit a brief in support of the objection may be deemed an abandonment of the objection.

A magistrate judge's recommendation cannot be appealed to a Court of Appeals; only the district judge's order or judgment can be appealed.

2. **Transcript (applicable Where Proceedings Tape Recorded).** Pursuant to 28 U.S.C. § 1915 and FED.R.CIV.P. 72(b), the Magistrate Judge finds that the tapes and original records in this case are adequate for purposes of review. Any party planning to object to this recommendation, but unable to pay the fee for a transcript, is advised that a judicial determination that transcription is necessary is required before the United States will pay the cost of the transcript.

s/WILLIAM E. CASSADY \_\_\_\_\_

UNITED STATES MAGISTRATE JUDGE